



Oregon Citizens' Utility Board

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Via Electronic Filing
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Oregon Public Utility Commission
John Mellgren, Administrative Law Judge
Attn: Filing Center
PO Box 1088
Salem, OR 97038-1088

RE: UM 2273 Final Scoping Comments

Dear Judge Mellgren and members of the Commission:

The Oregon Citizens' Utility Board (CUB) is grateful to the Oregon Public Utility Commission (PUC) for its efforts to address questions and concerns of stakeholders in the UM 2273 investigation. The PUC has been flexible and accommodating throughout the HB 2021 investigations, and to CUB, this comes as no surprise. We appreciate the opportunity to file final comments on the UM 2273 scoping questions. Below we make brief comments on HB 2021's "public interest" requirement and the process to address outstanding issues.

HB 2021's Public Interest Considerations

CUB understands that some stakeholders have concerns over what a HB 2021 public interest analysis might look like, but at the same time the need for that determination to be flexible and based upon the best information at the time of deliberation. However, we clarify that we continue to believe that the Commission has the discretion and authority to conduct the analyses as directed by Oregon laws, including using its expertise and broad regulatory authority. A determination of what is in the public interest is at the discretion of the Commission at the time it makes that analysis, as is the same for other analyses required in other utility regulatory matters. Since its inception, the Commission's core role is to regulate in the public interest, which it has the discretion and authority to determine. The tricky thing with "public interest" is that it shifts. Six or seven years ago with the focus on moving away from coal-fired generation, connecting to natural gas may have been

considered in the public interest, but that analysis would likely look differently today given the policy shifts since then.

Upon review of HB 2021 and additional reflection since the UM 2273 Special Public Meeting on April 18, 2023, CUB believes HB 2021 provides clear direction for what the PUC will consider in a public interest analysis of a utility's CEP, and this includes discretion to determine if a CEP has meaningfully considered impacts on environmental justice communities and reducing energy burden. CUB also expects the PUC will continue to meaningfully consider all stakeholder input, and the agency is well-qualified to make a public interest determination.

Given the necessary malleability of "public interest" and the fact that the Commission generally cannot bind future Commissions through language in an order, to define "public interest" would be counter to the primary role of the PUC and probably not very helpful. CUB continues to recognize and support the PUC's authority and discretion to make decisions on what is in the public interest.

In response to stakeholders' concerns about the Commission's analysis of the public interest, perhaps those parties could be referred to previous Commission orders analyzing public interest to get a general understanding of how the Commission has analyzed public interest in prior orders. Newer parties to Commission decisions are not as familiar to PUC decision-making and review of prior decisions may benefit from an understanding what public interest analysis has looked like, whether through summary or reference to orders — with the caveat that "in the public interest" is discretionary and may change over time and vary by issue, as explained above.

Process for resolving outstanding legal questions

Regarding the option to delay addressing the issues raised in this docket until after the first CEP process is complete, CUB sees the possibility of resolving some of these questions in review of each utility's CEP. However, we believe that option depends on the utility's intended procurement timeline — there must be ample time for discussion of utility procurement planning prior to when investment decisions are made. This may not be the best option for resolving the issues raised in this docket.

Declaratory rulings have been offered as a means to efficiently resolve outstanding legal questions. This is an interesting suggestion to consider and we appreciate the utilities proposing a process here. CUB has not weighed in on declaratory issues as of late, and we have not seen it used that frequently. A recent declaratory ruling, Order No. 21-455, states that the decision is only binding on the petitioners and not other parties, among other limitations that may not achieve the goals of parties here.¹

¹ See "Staff Conclusions" in *In re Renewable Energy Coalition, Community Renewable Energy Assoc., and Oregon Solar + Storage Indust. Assoc.*, Docket DR 57, Order No. 21-455, Appx. A at 5, (Dec. 2, 2021), <https://apps.puc.state.or.us/orders/2021ords/21-455.pdf>.

Given the decision in that order, a declaratory ruling may not be the best option. CUB offers another option for the Commission's consideration and proposes a similar process to that used in UM 1909.² This was a contested case proceeding where parties agreed to stipulate to the facts and go straight to briefing without testimony. This process could be an efficient way to address outstanding legal questions that do not have facts to dispute, merely asking: what does the law say?

The language of HB 2021 ended up as it is after careful and intentional crafting and negotiation, including purposefully leaving certain issues out of the bill. However, it can be expected that there are some stakeholders who are not aware of the history of that legislative process. And for some parties, clarification would truly be helpful. We appreciate the Commission's continued accommodation and patience as we all dive into the implementation phase of the HB 2021 investigation. Thank you again for the opportunities to engage in this process.

Sincerely,

Jennifer Hill-Hart
Policy Manager
Oregon Citizens' Utility Board

² In the Matter of PUBLIC UTILITY COMMISSION OF OREGON, Investigation of the Scope of the Commission's Authority to Defer Capital Costs, UM 1909, Prehearing Conference Report (Jan. 9, 2018), <<https://edocs.puc.state.or.us/efdocs/HDC/um1909hdc162733.pdf>>.